



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Fourth day of August Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

CRIMINAL MISCELLANEOUS PETITION No.7453 of 2021

IN CRL OP.14967/2016

JUSTICE K.CHANDRU (RETD) [PETITIONER/5TH RESPONDENT]
COURT COMMISSIONER,

Vs

1 N.ANANTHAN [1ST RESPONDENTS/PETITIONER]

2 THE SUPERINTENDENT OF POLICE, [2ND RESPONDENTS/1ST RESPONDENT]
GUDALUR, NILGIRIS

3 THE INSPECTOR OF POLICE, [3RD RESPONDENTS/2ND RESPONDENT]
GUDALUR, NILGIRIS

4 CHARITY HOME FOR [4TH RESPONDENTS/3RD RESPONDENT]
THE MENTALLY RETARDED, REP ITS MANAGING
TRUSTEE CHARITY HOMES FOUNDATION,
12/172-C, MAKAMOOLA THORAPPALI ROAD,
GUDALUR, THE NILGIRIS

5 THE DISTRICT COLLECTOR [5TH RESPONDENTS/4TH RESPONDENT]
MADURAI.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

(a) To permit the Court commissioner to sell the property at Shed No.1, Industrial Estate, Thirumazhisai, Sriperumbudur Taluk covered by sale deed No.2273 of 2016 to Mrs.Patina Alwin Rebello, w/o. Alwin John Rebello residing at Plot No.915, 11th Sector, 66th Street, K.K.Nagar, Chennai-600 078 and the sale deed to be executed by Mr.M.K.Kabir, Court appointed guardian for Manoj Rajan with the Sub-Registrar Poonamallee or any other competent authority and hand over all the original documents to the Purchaser of the property as and when the full sale consideration of Rs.Two Crores and Five Lakhs is paid to the Court Commissioner and credited to the account of Manoj Rajan.



(b) To modify the order dated 2.8.2016 in CrI.OP.No.14967/2016, more particularly para 35(4)(a) and permit the Sub-Registrar, Poonamallee or any other competent authority to register the sale of the property covered by Document No.2273 of 2016 and also to carry out appropriate entries in the encumbrance certificate in relation to that property.

(i) An order is prayed for accordingly as per Para 25(a) & (b) above and render justice and also direct the registry to mark a copy of the aforesaid order to the Sub-Registrar, Poonamallee, Chennai-600 056.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of MR.JUSTICE K CHANDRU(RETD), on behalf for the petitioner, and of MR.S.VIJAYARAGHAVAN, & MR.D.VIVEKANANDAN, Advocate on behalf of the 1st Respondents, and of MR.C.KATHIRAVAN, Government Advocate on behalf of the 2nd, 3rd, 5th, Respondents, and of MR.P.V.RAVICHANDRAN, Advocate on behalf of the 4th Respondents, MR.N.VIJAYARAGHAVAN, (Amicus curiae) Advocate the court made the following order:-

Heard Justice K.Chandru, Court Commissioner, the petitioner herein, Mr.M.K.Kabir, Senior Advocate-cum-Court appointed guardian of Manoj Rajan, Mr.S.Vijayaraghavan and Mr. D. Vivekanandan, learned counsel for the first respondent, Mr. C. Kathiravan, learned Government Advocate appearing for respondents 2,3 and 5, Mr. P.V. Ravichandran, learned counsel for the fourth respondent and Mr.N. Vijayaraghavan, learned *Amicus Curiae*.

2. This Petition is filed by the Court Commissioner for selling the property at Shed No.1, Industrial Estate, Thirumazhisai, Sriperumbudur Taluk and for certain other reliefs.

3. The property in question was purchased by Late E.J.Rajan from the Tamil Nadu Small Industries Development Corporation Ltd vide sale deed No.5790 of 1992 dated 23.10.1992 (wrongly described as 2273/2016 in the petition) and he was running Lizman Engineering, a proprietary concern, in Shed No.1, Industrial Estate, Thirumazhisai, Sriperumbudur Taluk. His wife Mrs.Lizzie Rajan died on 14.05.1993 and Mr.E.J.Rajan died on 26.12.2013, thereby leaving their only son Manoj Rajan who was left in the care of Charity Home for the Mentally Retarded (fourth respondent), by Ananthan (first respondent), with whom, Late E.J.Rajan had entrusted the responsibility of bringing up his son who was mentally challenged. He was also given the custody of documents of the properties owned by Late E.J.Rajan.

4. It was at the instance of Ananthan (first respondent) that the entire proceedings in CrI.O.P.14967 of 2016 was started and several orders were passed by this Court in the said case on various dates including on 02.08.2016, 24.08.2016, 02.09.2016, 03.10.2018, 11.12.2018, 04.01.2019, 22.11.2019, 26.02.2020, 02.12.2020 and also on 22.04.2021 in CrI.M.P.No.5106 and 5108 of 2021. It is unnecessary



to set out the details of those orders. It is suffice to state that the cumulative effect of those orders was that this Court has appointed a guardian for Manoj Rajan and also the Court Commissioner to sell the properties of Manoj Rajan.

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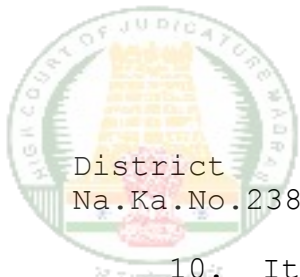
5. It must be stated that an attempt was made to sell the property in question in the name of Manoj Rajan without any legal authority in favour of one T.Rajeswari by registered sale deed no.2273/2016. Subsequently, when the fraudulent sale was brought to the notice of this Court, the same was directed to be cancelled. Accordingly, the purchaser (T.Rajeswari) in sale deed no.2273/2016 executed a registered deed of cancellation in Doc.No.405/2017 in the presence of the Court appointed guardian M.K.Kabir. The parent sale deed which is a genuine one standing in the name of late E.J. Rajan is Doc. No.5790 of 1992 dated 22.10.1992.

6. By order dated 26.02.2020, this Court permitted the sale of all the properties of Manoj Rajan by the Court Commissioner with the help of Murray & Co., a leading auctioneers and credit the sale proceeds to the account of Manoj Rajan kept by the Court Commissioner. However, subsequently, the said direction was modified and the Court Commissioner was authorised to sell the property and also to take the assistance of a 3-Member team comprising Mr. M.K. Kabir, Court appointed guardian, Mr. S. Vijayaraghavan, counsel for Ananthan and Mr.N.Vijayaraghavan, *Amicus Curiae*, appointed by this Court.

7. Pursuant to the order of this Court, the CB-CID took possession of the industrial shed and handed over the keys of the said property to the Court Commissioner on 24.03.2020 and since then, the property has been in the custody of the Court Commissioner.

8. In the meanwhile, the Court appointed guardian Mr.M.K.Kabir entered into a Memorandum of Agreement dated 04.10.2017 and sold the movable properties lying in the industrial shed and deposited the amounts realised by such sale to the credit of Manoj Rajan's account. A direction was also issued by this Court on 02.08.2016, wherein, in paragraph 35(4)(a), an order of injunction was passed against the Sub-Registrar, Poonamallee, from registering any further document in respect of the property covered by Doc.No.2273/2016 on his file and that the Registrar should ensure that the encumbrance certificate reflects the order of this Court in order to protect the property from land grabbers. It is stated that the said order has been given effect to.

9. It must also be noted that since Manoj Rajan is a mentally challenged person, he comes under the statutory protection under the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 and therefore, a request was made to the District Level Local Committee, Madurai (presently under whose jurisdiction Manoj Rajan is residing) to give permission to sell the properties of Manoj Rajan and credit the sale proceeds to his account. The proceedings of the District Level Local Committee giving permission was informed to this Court by the



District Collector, Madurai vide his Proceedings No. Na.Ka.No.2383/AST/2014 dated 12.12.2019.

10. It must be stated that this Court also took the assistance of the Inspector General of Registration in getting the value of the properties assessed and accordingly, a report dated 11.12.2018 was received from the said department. In respect of the property in question, the following valuation was received:-

Factory of Lizman Engineering at Thirumazhisai Industrial Estate, the value is Rs.1,14,25,436/-.

11. Pursuant to the appointment of the Court Commissioner, he issued advertisements in two leading dailies (Indian Express and Dinamani) dated 15.02.2021 and fixed the upset price as Rs.1,75,00,000/- and called for tenders from intending purchasers. As per the proceedings no.5/2021 dated 15.03.2021 issued by the Court Commissioner, there were 7 tenderers bidding various amounts. After informing the 3-Member team, a provisional allotment was made in favour of Sri Kanagavalli Enterprises & Realty, No.52E, 47th Street, 9th Avenue, Ashok Pillar, Chennai - 600 083 who had submitted the highest bid i.e. Rs.2,01,00,010/- with certain conditions regarding payment. However, the said bidder did not comply with those conditions and there were letters of exchange through e-mail between the bidder and the Court Commissioner. It was stated by the Court Commissioner that finally on 01.07.2021, the bidder sent an e-mail wherein they had withdrawn their offer and sought cancellation of the provisional allotment. The details of the correspondence are set out in the petition filed by the Court Commissioner and it is unnecessary to extract them in this order, thereby making it prolix.

12. Subsequent to the withdrawal of the offer, the Court Commissioner, after consultation with the 3-Member team, called for a limited auction among the remaining bidders and notices were sent to as many as five bidders to appear for an auction sale to be held at the office of the Court Commissioner on 17.07.2021. The procedure adopted by the Court Commissioner regarding the auction sale is set out in detail in Proceedings No.16/2021 dated 17.07.2021. Only two bidders participated in the auction sale and the highest bidder quoted an amount of Rs.2,05,00,000/- for purchase of the property.

13. The Court Commissioner gave a provisional allotment in favour of Mrs.Patina Alwin Rebello, w/o. Alwin John Rebello residing at Plot No.915, 11th Sector, 66th Street, K.K.Nagar, Chennai - 600 078 with certain conditions, including immediate deposit of substantial amount towards the purchase of the property. The Court Commissioner informs that a sum of Rs.1,00,00,000/- was received by him in his bank account on 29.07.2021 deposited by the provisional allottee. The Court Commissioner also informs that the said allottee is willing to deposit the remaining amount at any time as directed and therefore, the present petition has been filed by the Court Commissioner.



14. Mr.M.K.Kabir submitted that the offer made by the successful allottee is much higher than the offer made by the previous allottee who withdrew his offer and hence, the sale may be confirmed in his favour. This Court has gone through the records and found that the procedure adopted by the Court Commissioner in the sale of the property is fair and in the interests of Manoj Rajan. Hence, this Court is of the opinion that the reliefs prayed for by the Court Commissioner have to be necessarily granted in effecting the sale of the property.

15. Accordingly, this Court issues the following directions:

- (a) The Court Commissioner is permitted to give order for selling the property at Shed No.1, Industrial Estate, Thirumazhisai, Sriperumbudur Taluk covered by sale deed no. 5790 of 1992 in favour of Mrs.Patina Alwin Rebello, after the payment of the balance amount of Rs.1,05,00,000/- by Mrs.Patina Alwin Rebello.
- (b) The Court Commissioner, on deposit of the entire sale consideration of Rs.2,05,00,000/- by the provisional allottee, shall transfer the amount to Manoj Rajan's S.B. A/c No.0942101018179 maintained with Canara Bank, Kasturiba Nagar Branch, Adyar, Chennai - 600 020 and shall inform Mr.M.K.Kabir, Court appointed guardian.
- (c) On such transfer, a sale deed is to be executed by Mr.M.K.Kabir, Court appointed guardian for Manoj Rajan in favour of Mrs.Patina Alwin Rebello, W/o. Alwin John Rebello, residing at Plot No.915, 11th Sector, 66th Street, K.K.Nagar, Chennai - 600 078 in the office of the jurisdictional registering authority and hand over all the original title documents of the property as well as the keys of the industrial shed to the purchaser.
- (d) The order dated 02.08.2016 in Crl.O.P.No.14967 of 2016, more particularly para 35(4)(a), is hereby modified and the order of injunction granted against the Sub-Registrar, Poonamallee is lifted in respect of registering the above property alone. The Sub-Registrar, Poonamallee shall effect appropriate entries in the encumbrance register immediately, so as to facilitate the sale of the property.

This criminal miscellaneous petition is ordered in the above terms.

-sd/-

04/08/2021

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY



1 THE HONBLE MR.JUSTICE
K.CHANDRU (RETD.)
NO.4-B,KANCHANA,
78, ST. MARYS ROAD,
ABIRAMAPURAM, CHENNAI-18.

2 MR.M.K.KABIR, SENIOR ADVOCATE
NO80, LAW CHAMBERS, HIGH COURT, CAMPUS,
CHENNAI 600 104.

3 MR.N.VIJAYARAGHAVAN,
ADVACATE, NO.3, I STREET,
NORTH GOPALAPURAM,
CHENNAI 600 086.

4 MRS.R.RAJKUMARI
EXECUTIVE DIRECTOR, M/S M.S.
CHELLAMUTHU TRUST & RESEARCH FOUNDATION,
643, K.K.NAGAR,
MADURAI -20 (MOBILE.96299 11343)

5 THE BRANCH MANAGER
CANARA BANK, THALLAKULAM
BRANCH, MADURAI

6 THE BRANCH MANAGER
CANARA BANK, KASTURBAN
NAGAR BRANCH, ADYAR,
CHENNAI 600 020.

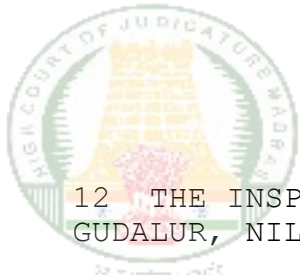
7 THE SUB REGISTRAR,
POONAMALLEE REGISTRATION DEPARTMENT,
CHENNAI-600 056.

8 THE REGISTRAR, REGISTRATION
DEPARTMENT SH 57, RAMANUJAR NAGAR,
SRIPERUMBUDUR, TAMIL NADU 602 105.

9 THE GOVERNMENT PLEADER,
MADRAS HIGH COURT,
CHENNAI

10 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

11 THE SUPERINTENDENT OF POLICE
GUDALUR, NILGIRIS.



12 THE INSPECTOR OF POLICE
GUDALUR, NILGIRIS.

13 THE MANAGING TRUSTEE,
CHARITY HOMES FOUNDATION,
CHARITY HOME FOR
THE MENTALLY RETARDED,
12/172-C, MAKAMOOLA
THORAPPALI ROAD,
GUDALUR, THE NILGIRIS.

15 THE DISTRICT COLLECTOR
MADURAI.

C.C. to MR.JUSTICE K CHANDRU (RETD), on payment of necessary charges

Order

in
CRL MP.7453/2021

in
CRL OP.14967/2016

Date :04/08/2021

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